

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**[CRIMINAL JURISDICTION]**

**CRIMINAL HIGH COURT CASE NO. HAC 30 OF 2023**

**Lautoka Magistrates Court case No. 1082 of 20**

**STATE**

**V**

**SHALEND REDDY**

Counsel: Ms. S. Swastika for State  
Mr. R. Filipe for Defence

Date of Hearing: 17 March 2023  
Date of Sentence: 24 March 2023

**SENTENCE**

1. Mr. Shalend Reddy, you stand convicted of two counts of possession of illicit drugs contrary to Section 5(a) of Illicit Drug Control Act 2004. The charge reads as follows:

CHARGE

(COMPLAINT BY PUBLIC OFFICER)

FIRST COUNT

Statement of Offence (a)

UNLAWFUL POSSESSION OF ILLICIT DRUGS: Contrary to Section 5(a) of the Illicit Drug Control Act, 2004.

Particulars of Offence (b)

SHALEND REDDY on the 4th day of August, 2020 at Lautoka in the Western Division, without lawful authority had in his possession 900.15 grams of Methamphetamine, an illicit drug.

SECOND COUNT

Statement of Offence (a)

UNLAWFUL POSSESSION OF ILLICIT DRUGS: Contrary to Section 5(a) of the Illicit Drug Control Act 2004.

Particulars of Offence (b)

SHALEND REDDY on the 4th day of August, 2020 at Lautoka in the Western Division, without lawful authority had in his possession 25.1 grams of Indian hemp botanically known as cannabis sativa, an illicit drug.

2. In the Magistrates Court at Lautoka, you pleaded guilty to each count. The Learned Magistrate found you guilty on the facts you had admitted. Being satisfied that the guilty plea was unequivocal and free from any influence, the Learned Magistrate convicted you on both counts and referred the matter to this Court for sentencing under Section 7(1) and 190(1) of the Criminal Procedure Act. You now come before this Court for sentence.
  
3. The facts you admitted are as follows:

On the 4th day of August, 2020 at about 1430hrs at Bal Ram Dass St. Kermode Road, Lautoka CPL 4189 Farasiko, (A-1), 45 years, Police Officer of Lautoka Police Station found Shalend Readdy, (B-1), 46 years, unemployed, of Bal Ram Dass St, Kermode Road, Lautoka in unlawful possession of illicit drugs. On the above date time and place (A-1) and team searched (B-1)'s house upon receiving information. When the officers searched (B-1)'s bedroom some smoking apparatus was found. Then (A-1) went inside the bathroom and found an ADIDAS bag containing 2 x white clear air tight plastic containing white substance believed to be Methamphetamine. The team thoroughly searched the house room and (A-1) found 5 x clear plastic containing white substance believed to be Methamphetamine and 5 x clear plastic containing seeds believed to be marijuana. (A-1) then arrested (B-1) and together with seized drugs escorted to Lautoka Police Station and handed over to CPL 2021 Daniele.

Upon receipt of report CPL Daniele was detailed to be the Investigating Officer. Statement of Arresting Officer was written and the drugs were handed over to Investigating Officer. The Methamphetamine, dried leaves and the apparatus were escorted for analysis by the Drug Analyst and the result is positive as

Methamphetamine with the total weight of 900.15 grams and cannabis sativa with the total weight of 25.1 grams. (B-1) was interviewed under caution who admitted committing the offence and later charged for a count of UPOID: Contrary to Section 5(c) of Illicit Drug Control Act of 2004.

4. I perused the record and enquired into the circumstances of the case before Learned Magistrate for the purpose of the sentencing.
5. In selecting the sentence that is best suited to you, I bear in mind the proportionality principle enshrined in the Constitution, the Sentencing and Penalties Act 2009 (SPA), specifically, Section 4 of the Act, the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Having due regard to the seriousness and the potential harm of your offence, I would select the starting point. After making due adjustments for the aggravating and the mitigating features, I will arrive at the final sentence that is just and reasonable in all the circumstances of this case.
6. The maximum punishment prescribed for each offence is a fine of \$1 Million or life imprisonment or both. The maximum punishment prescribed for the offence signifies the seriousness of the offence.
7. Methamphetamine abuse has both short and long-term adverse health effects. This drug was initially used as a treatment for asthma, though is rarely used for that purpose today. When used in solution form for injecting or free-base form for smoking, the impact is very fast and strong, and has a much greater propensity for dependence and addiction. The gravity of Methamphetamine addiction was explained as follows by Professor Nutt in his evidence given in the case of *Zhang v R* [2019] NZCA 507 [21 October 2019] (in which the new guideline was set by the New Zealand Court of Appeal):

Methamphetamine dependence/addiction is a brain disorder that once established is hard to overcome. It does not go away on its own by simply stopping someone using methamphetamine. The desire to use is often present for years after stopping because the memories of the effects of methamphetamine, especially when smoked or injected, are so powerfully pleasurable that they never go away. The desire to use again, even when the person knows that to do so will lead them back into the addiction, or even to prison, can be profound and in many cases will overwhelm their intention not to use.

8. There was no established tariff or a guideline judgment for offences involving Methamphetamine until the Fiji Court of Appeal pronounced the judgment in *Abourizk v State* [1991] FJCA 98 (7 June 2019). Having considered the judicial pronouncements in Fiji and in other jurisdictions, the Court of Appeal set the following sentencing tariff for all offences defined in Section 5(a) and 5(b) of the Illicit Drugs Control Act 2004 involving hard drugs such as Cocaine, Heroin and Methamphetamine.

Category 1 - Up to 05g- 02 1/2 years' imprisonment

Category 2 - More than 05g up to 250 g - 3 1/2 years to 10 years' imprisonment

Category 3- More than 250g up to 500g - 09 years to 16 years' imprisonment

Category 4- More than 500 g up to 01 kg -15 years to 22 years' imprisonment

Category 5 - More than 01 kg- 20 years to life imprisonment

9. The Court emphasised that the sentencing outside the bands is not forbidden, although it must be justified. The weight given in each category appears to be based on the assumption that the substance contained pure drug, in this case Methamphetamine.

10. Your offence on count one falls under category 4 above thus attracts an imprisonment term of 15-22 years' imprisonment.

11. *Abourizk* guideline judgment restricted the application of *Sulua v State* [2012] FJCA 33 (31 May 2012) sentencing tariff only to all types of *Cannabis Sativa* offences defined in Section 5(a) and 5(b) of the Illicit Drugs Control Act 2004. *Sulua* guidelines are as follows:

(i) **Category 1:** possession of 0 to 100 grams of cannabis sativa - a non-custodial sentence to be given, for example, fines, community service, counselling, discharge with a strong warning, etc. Only in the worst cases, should a suspended prison sentence or a short sharp prison sentence be considered.

(ii) **Category 2:** possession of 100 to 1,000 gram of cannabis sativa. Tariff should be a sentence between 1 to 3 years imprisonment, with those possessing below 500 grams, being sentenced to less than 2 years, and those possessing more than 500 grams, be sentenced to more than 2 years imprisonment.

(iii) Category 3: possessing 1,000 to 4,000 grams of cannabis sativa. Tariff should be a sentence between 3 to 7 years, with those possessing less than 2,500 grams, be sentenced to less than 4 years imprisonment, and those possessing more than 2,500 grams, be sentenced to more than 4 years.

(iv) Category 4: possessing 4,000 grams and above of cannabis sativa. Tariff should be a sentence between 7 to 14 years imprisonment.

12. Your offence on count two falls under category 4 above which warrants even a non-custodial sentence and discharge after a warning.
13. In *Abourizk*, the Court preferred a quantity based approach. There can be no doubt that quantity is an objectively verifiable factor, the best marker of harm and a rational measure of culpability for offending which poses a danger to public health. Harm inflicted on the community is particularly important in sentencing for commercial drug offending because of its corrosive effect on communities.
14. The illicit drug offending has become a serious problem in Fiji. A higher quantities of hard drugs such as methamphetamine have been seized in recent years. Deterrence is a legitimate sentencing purpose in the Sentencing and Penalties Act and the real life experience tells us that it works for most people. In the context of methamphetamine sentencing, particularly relevant purposes include deterrence of the offender/other persons from committing similar offending and the protection of the community.
15. There is no evidence that you are a user or an addict of the drug you were found in possession. The quantity and the manner in which the drugs had been packed and concealed suggest that you possessed the drug for commercial purpose. The drugs had been concealed in two airtight bags before being placed inside another bag which had been hidden in the bathroom. Illegal drug dealing is a lucrative business and those who are in this business have no regard to harm that is caused to the community at large. Based on the seriousness of the offence and the harm that this drugs could potentially cause to the community, I pick a term of 17 years and 5 months as the starting point of your sentence.
16. While the seriousness of the offence, the quantity/purity of the illicit drug are relevant considerations (at tier one), the sentencing discretion must be guided (at tier two) by all other

relevant considerations such as the objective features of the offence and the subjective features of the offender.

17. There are no substantial aggravating features in your offending. Since the quantity and the manner in which the drugs had been concealed (commercial aspect) have already taken into consideration in selecting the starting point, I would not consider those as aggravating factors.
18. I considered the mitigation submission filed by your counsel carefully. I find no substantial personal mitigating features to your credit. You are 48 years old security guard looking after your elderly mother. I take your conduct in pleading guilty to the charge, albeit not at the first available opportunity, as a genuine expression of remorse that qualify you for a reduction in sentence. The guilty plea also saved time and resources of the trial court. You have no previous history of any criminal conduct. Previous good character carries considerable mitigating value. I give you a reduction of 2 years for mitigating features to arrive at an interim sentence of 15 years' and 5 months imprisonment.
19. It is common knowledge that hard drugs are often adulterated for commercial purpose to maximize profit. When I perused the Magistrates Court Record, I found that the analyst's report filed therein lacks clarity as to purity (pure Methamphetamine percentage) of the substance found in your possession. It only says 'positive for Methamphetamine'. As I said before, the Abourzk categories appear to be based on the pure weight of the drug. Therefore it is all fair to give a substantial discount on that account warranting a sentence outside tariff band. I deduct your sentence by 2 year to arrive at a sentence of 13 years and 5 months' imprisonment.
20. You had been in remand initially for 3 months and 20 days and, after the conviction, for another 1 month and 14 days. I consider the remand period as an imprisonment term you have already served. I deduct 5 months for the remand period to arrive at a final sentence of 13 years' imprisonment.
21. On count two, you are fined 100 FJD default of which one month imprisonment in addition to the imprisonment term imposed on count 1. To balance your potential for rehabilitation with protection of the community, I fix a non-parole period of 12 years.

Summary

22. **Mr. Shalend Reddy, you are sentenced to 13 years' imprisonment with a non-parole period of 11 years.**
  
23. **You have 30 days to appeal to the Court of Appeal.**



Aruna Aluthge

Judge

24 March 2023

Solicitors:

Office of the Director of Public Prosecutions for State  
Legal Aid Commission for the Convict

